Trujillo v. Apple Computer, Inc. et al Doc. 94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all others similarly situated, Plaintiff, V APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation, Defendants.	)))))))))))	 No. 07 CV 04946 Judge Kennelly Mag. Judge Ashman

PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY IN SUPPORT OF HIS RESPONSE TO DEFENDANT AT&T MOBILITY LLC'S MOTION TO COMPEL ARBITRATION AND DISMISS

Plaintiff, by and through his attorney, LARRY D. DRURY, LTD., respectfully requests leave to submit supplemental authority in support of his Response to Defendant AT&T Mobility LLC's Motion to Compel Arbitration and Dismiss, namely *Steiner v. Apple Computer, Inc., and AT&T Mobility, LLC,* No. C-07-04486 (N.D. Ca., March 12, 2008)(attached hereto as Exhibit A). The decision in *Steiner* addresses the question now before this Court on Defendant's Motion, i.e, whether or not Defendant's motion to compel should be denied.

The *Steiner* case concerns arbitration quite similar to the case at bar, as it contains the same defendants, allegations, causes of action, and involves the same arbitration agreement. The court in *Steiner* ruled that the Defendant's arbitration provision in its entirety was procedurally and substantively unconscionable, and thus unenforceable. *See* p. 1 of Ex. A. The court opined that the Defendant's arbitration clause demonstrates "an adhesive contract, a lack of market alternatives, and surprise, demonstrating procedural unconscionability. Likewise,

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[plaintiffs have] shown substantive unconscionability by showing AT&T's class arbitration waiver operates as an exculpatory clause. Thus...the class arbitration waiver is unconscionable." (further finding the entire arbitration clause unenforceable since Defendant's arbitration waiver provides, "If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.") *See* p. 25 of Ex. A.

Addressing the question posed to the parties by this Court, the court in *Steiner* stated that:

> "AT&T concedes at the time of an iPhone purchase, in a store, all a consumer receives is a pamphlet and a fact sheet. AT&T does not claim these documents, totaling three pages, contain any information regarding the Arbitration Agreement, and the Court found none. **AT&T does claim a Terms of Services booklet is available in a store which sells iPhones, but neither claims it is given to a consumer at purchase, nor explains the failure to provide one."**

See p. 15 of Ex. A (emphasis added).

The decision in *Steiner* should aide this Court in its ruling on Defendant's Motion to Compel Arbitration and Dismiss, as Defendant here advances arguments similar to those it advanced (and the court rejected) in *Steiner.*

WHEREFORE, Plaintiff respectfully requests that this Court grant leave for Plaintiff to file *Steiner* as supplemental authority in support of his Response to Defendant's Motion to Compel Arbitration and Dismiss.

Dated: May 1, 2008

Respectfully submitted,

JOSE TRUJILLO, on behalf of himself and all others similarly situated,

By: /s/ James R. Rowe

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